*Judgment Sheet*

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

## Civil Rev. Application No.S-184 of 2020

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| Applicants | : | Ahmed & others through their LRs<br>through Mr. Kalandar Bakhsh M. Phulpoto, Advocate |
| Respondents No.1to4 | : | Shahmir & others through their LRs,<br>Through Mr. Nisar A. Bhanbharo, Advocate |
| Respondents No.5 to9: | | Province of Sindh & others<br>Through Mr. Ali Raza Balouch, AAG |
| Date of hearing | : | 20.11. 2023 |
| Date of Decision | : | 12.01.2024 |

## J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("the Code"), the applicants have impugned Judgment and Decree dated 28.9.2020 and 01.10.2020, respectively, passed by the learned Additional District Judge, Mirwah ("the appellate Court") in Civil Appeal No.98 of 2019, whereby; the Judgment and decree dated 13.3.2019 respectively, passed by Senior Civil Judge, Mirwah ("the trial Court") in F.C. Suit No.106 of 2010, whereby the suit of Respondents No.1 to 4/plaintiffs was dismissed, has been set-aside, by decreeing their suit.

2. The case of Respondents No.1 to 4/plaintiffs before the trial Court was that they were owners of agricultural land to the extent of 02-31 Acres out of Survey Nos.296 (3-37 acres) and 298 (02-35 acres), a total area of 06-30 acres, situated in Deh Sawri, Taluka Mirwah, District Khairpur ('suit land'). The suit land was mutated in their name, and they were in possession thereof until 2006. In the year 1995, the suit land was mortgaged by the deceased Karim Dino (Respondent No.4) with Zarai Tarqiati Bank Limited ('ZTBL') in consideration of a

loan obtained by him during his lifetime from the ZTBL. Likewise, in the year 2005, the suit land was mortgaged by Shahmir (Respondent No.1) with ZTBL in consideration of a loan obtained by him. In 2002, at the request of the applicants, the suit land was leased out to them by Respondents No.1 to 4 for a period of three years. After the expiry of the lease period of three years, it was again extended for a further period of three years, which expired in the year 2008. Upon expiry of the lease period, when they demanded possession of the suit land from the applicants, they refused and claimed their ownership of the suit land on the basis of a false registered Sale Deed dated 15.02.1997, allegedly registered by the Sub-Registrar Taluka Mirwah on the basis of a Sale Certificate issued by the Tapedar Deh Sawri. On the basis of the above false Sale Deed, the applicants also mutated the record of rights in their favour. Afterwards, Respondents No.1 to 4 filed a Revenue Appeal before D.D.O. (Rev.) Mirwah, who, via an Order dated 20.5.2010, cancelled entries No.131, 132, and 133 and advised the aggrieved party to approach the Civil Court to seek relief of cancellation of the registered Sale Deed. In the above background, Respondents No.1 to 4 had prayed for a declaration that they are the owners of the suit land and the applicants have no right, title, or interest over the suit land; the registered sale deed dated 15.02.1997 in favour of the applicants be cancelled; to direct them to hand over possession of the suit land to them and also prayed for mesne profit at the rate of Rs.12500/- per year. Consequential relief of a permanent injunction was also sought by them to restrain the applicants from selling, transferring, and leasing out the suit land to a third party.

3. Upon service of summons, Applicants No.1, 3, and 4 contested the suit and filed their joint written statement. They admitted the ownership of Respondents No.1 to 4 regarding the suit land. They submitted that Respondents No.1 to 4 transferred the ownership in their favour via a registered Sale Deed dated 15.02.1997 by receiving

a sale consideration of Rs.25,000/-, coupled with handing over possession of the suit land. Such records of rights were mutated in their favour on the basis of the above Sale Deed, and they are in possession of the suit land as owners. They have also admitted that the suit land was mortgaged by Respondents No.1 and 4 with ZTBL, asserting that it was available for sale during the mortgage period. They added that they had challenged the Order dated 20.05.2010, passed by the D.D.O. (Rev.) before D.O. (Rev.). Lastly, they raised legal pleas that the suit is barred under the law, not maintainable and bad for misjoinder and non-joinder of necessary parties

4. From the divergent pleadings of the parties, the trial Court formulated the following issues:-

i. *Whether the suit is barred under the law?*

ii. *Whether the plaintiffs are the lawful owners of the suit land?*

iii. *Whether plaintiffs leased out suit land orally to private defendants in 2002 for three years again extended lease period for three years more?*

iv. *Whether registered Sale Deed dated 15.02.1997 and entry No.148 dated 27.11.1997 are manipulated and fraudulent documents are liable to cancellation?*

v. *Whether suit land is in unlawful possession of the private defendants?*

vi. *Whether plaintiffs are entitled to the relief claim?*

vii. *What should the decree be?*

5. Both parties examined themselves and produced relevant documents supporting their claims. Besides the attorney of respondents No.1 to 4, they examined four official witnesses, i.e. Tapedar, an official from the office of Assistant Commissioner, Mobile Credit Officer ZTBL, and Sub-Registrar. On the other hand, applicants also examined official witnesses, i.e., Sub-Registrar, Tapedar, MCO ZTBL, private witness Shah Muhammad, and one marginal witness, Azizullah. Applicant No.3 Hoot Ali was also examined. After examining

the evidence produced by the parties and hearing their respective submissions, respondent No.1 to 4's suit was dismissed.

6. The above Judgment and decree of the trial Court were then impugned by Respondents No.1 to 4 through an Appeal, and through the impugned Judgment, the Judgment of the trial Court has been set aside, and the appeal has been allowed, and the suit of the Respondent No.1 to 4 was decreed.

7. At the outset, learned counsel representing the applicants submits that the learned Appellate Court has seriously erred by passing impugned Judgment and decree without considering material illegalities and irregularities; that there is serious misreading and non-reading of evidence available on record; that the suit is not maintainable and dispute regarding the records of right was pending before the revenue forum and the suit is barred under section 172 of Sindh land revenue Act; learned counsel urged that there is no legal embargo to sale the mortgaged land and doctrine of equity to redemption is applicable in the instant case; initial burden upon the respondents, who alleged that the sale deed is fraudulent and managed, respondents No. 1 to 4 could not establish the element of fraud, which is otherwise not direct evidence; applicants are in possession of the suit land being the owner, and the respondent No. 1 to 4 did not produce documentary proof that they were in possession during the period of 1997 to 2002. In the end, learned Counsel for the Applicants has prayed that instant revision application may be allowed by setting aside impugned Judgment and decree passed by learned Appellate Court. In support of his contention, learned counsel has relied on the case laws reported as PLD 2022 (AJK) 40, PLD 2023 Bal 51 (b), 2023 CLC 1049, 2020 PLD SC 324, PLD 2020 SC 400 & 2021 SCMR 415.

8. Conversely, learned counsel representing Respondent No. 1 to 4 contended that the relief claimed in the suit regarding the declaration of

the ownership along with consequential relief of cancellation of sale deed are beyond the competency of the revenue forum; Thus the suit is maintainable in terms of section 42, 39 of specific relief Act and section 53 of Sindh land revenue Act 1967. Counsel urged that the suit land was mortgaged, and the bank put a charge on the suit land when the alleged sale deed was executed by keeping entry in the passbook, and it could not be sold or alienated; applicants failed to discharge the onus to prove execution of sale deed dated 15.2.1997 and the trial court committed illegality which is rightly corrected by the appellate court. In the end, counsel submits that the applicant failed to prove the factum of possession, and it cannot be proved merely on the basis of the alleged registered sale deed. In their arguments, they placed reliance on the case law reported as PLD 2022 Bal 89 (e), PLD 2020 SC 390, PLD 2022 Sindh 423 & 2021 CLC 1609.

9. Learned A.A.G., while supporting the judgment and decree passed by the Appellate Court, has adopted the arguments advanced by learned Counsel for Respondent No. 1 to 4. It is further contended that the provision of Rule 31 of Order XLI CPC was not mandatorily applicable in each case as learned Appellate Court has rendered judgment while giving findings issue-wise with reasoning; besides party is not allowed to improve its case beyond what was originally setup in the pleadings. He has relied on the case laws reported as 2023 SCMR 890, 2022 CLC 692.

10. The arguments have been heard at length, and the available record has been carefully evaluated with the able assistance of the learned counsel for the parties, including case law relied upon by them. To evaluate whether justice has been dispensed, it is imperative to analyze the findings of both the Courts below.

11. Firstly, I prefer to discuss the question of the maintainability of the suit, as the trial Court held that the suit is barred by law. It is obvious from prayer (a) of the plaint that respondents No.1 to 4/plaintiffs have sought a declaration to affirm that they are the

rightful owners of the suit land. They further seek a declaration that the applicants/defendants have no right, title, or interest over the suit land on the basis of a false and fabricated Sale Deed. In prayer (b), they seek to cancel the registered Sale Deed dated 15.02.1997 and entry No.148 dated 27.11.1997, being false and fabricated by filing suit in the year 2010. By seeking such relief, respondents No.1 to 4 aim to cancel the registered Sale Deed in favour of the applicants. Whereas, a suit for the cancellation of an instrument can be filed under Section 39 of the Specific Relief Act, 1877, which provides as follows:–

> *"A person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, in its discretion, so adjudge it to be delivered up and cancelled."*

12. From a plain reading of Section 39 of the Specific Relief Act, 1877 it transpires that a suit for the cancellation of an instrument can be filed under this section through a declaration for the cancellation of the instrument, declaring it to be void and voidable. From the contents of the plaint, it is evident that a suit for the declaration and cancellation of a registered Sale Deed, along with consequential relief for a permanent injunction. Thererefore, there arises a legal question regarding the cancellation of the registered sale deed and the declaration of the rights of respondents No.1 to 4/plaintiffs in the suit land, which was beyond the competency of the Revenue forum. Needless to say, that there is a provision under the Land Revenue Act,1967 i.e Section 53, that is to be read in conjunction with Section 42 of the Specific Relief Act, 1877 whereby a declaration of right or legal character is to be sought from the civil court. Contrarily, the revenue authorities have the power only to correct errors in the entry or record of rights of land, which are made for fiscal purposes and do not confer any title or interest to the person whose name appears in them. However, if there is any dispute regarding the title or right of the land, especially when it is based on a document such as a sale

deed, the party claiming the right must approach the civil court and get their rights crystallized through *pro and contra evidence*. Unambiguously, a civil court has the jurisdiction to cancel a registered sale deed if it is found to be *void* or fraudulent yet within the stipulated period under the law of limitation. Notwithstanding, the revenue authorities have to follow the orders of the civil court and make necessary changes in the revenue records accordingly.

13. As such, though the jurisdiction of the civil court was appropriately invoked, and in the attending circumstances of the case did not warrant the revenue forum to exercises jurisdiction in such matters. In this regard, a perusal of the record reflects that the D.D.O. (Rev.) concerned cancelled the entries via an Order dated 20.05.2010. However, the said Order was challenged before the D.O. (Rev.) concerned, who, vide an Order dated 29.01.2011, set aside the above Order as well by holding that the matter is very old and subsequent entries kept in the revenue record on six registered Sale Deeds for a period of more than ten years. The matter is already sub-judice before the Civil Court, therefore the parties were advised to get the matter decided from a competent court of law. Resultantly, the respondents approached to the civil court for redressal of their grievances. It will be out of context to discuss here, that now it has become well-settled proposition of law that sanctity is to be attached to the registered document, nevertheless, the same can only be cancelled by the Civil Court under Section 39, of the Specific Relief Act, 1877, on certain grounds mentioned therein. In Case of Amir Jamal and others v. Malik Zahoor-ul-Haq and others (2011 SCMR 1023), Supreme Court of Pakistan has been pleased to observe in Paragraph No.7 as follows:-

> ***"7. We have heard the learned counsel and have also perused the record. In exercise of writ jurisdiction, question of title of a property cannot be gone into by the High Court. The scope of Article 199 is dependent on the questions which are devoid of factual controversy. A registered instrument can only be cancelled by a civil court of competent jurisdiction on the ground of fraud or otherwise. Section 39 of the Specific Relief Act provides***

> ***that a party which seeks cancellation of a registered instrument has to file a civil suit by approaching the civil court of competent jurisdiction and writ jurisdiction in such matters is barred".***
>
> The underlining is supplied to emphasis.

In Case of Mst. Ghulam Sakina v. Member (J) Board of Revenue Hyderabad and 4 others (PLD 2004 Karachi 391), it has been observed by the division bench of this Court as under:-

> *"In this regard the provisions of section 39 of the Specific Relief Act are self speaking. Under section 39 of the said Act, a registered instrument cannot be cancelled without intervention of the Civil Court of competent jurisdiction. The respondent No.5 had already approached the Civil Court for cancellation of the registered instrument; the respondent No. 1 could not have passed the impugned orders in respect of the same issues pending before the Civil Court more so in view of the bar of section 39 of the Specific Relief Act".*

14. However, the Respondents Nos.1 to 4 had wrongly assumed the jurisdiction of the revenue authorities by initially challenging the entries of the record of rights which were effected on the basis of registered sale deed. In Case of Nazakat Ali v. WAPDA through Manager and others (2004 SCMR 145), it was held by the Supreme Court of Pakistan that:

> *"It is well-settled by now that "where a person had sought remedy before wrong forum, he was not entitled to condonation of delay unless he proved that he had sought remedy before wrong forum in good faith".*

15. It is matter of record that the respondents Nos.1 to 4 have failed to prove that they had assumed the jurisdiction of "wrong forum" in "good faith". It is also matter of record that the sale deed was registered on 15-02-1997, but the Suit was instituted in the year, 2010. Albeit, the date of registration of the sale deed is itself notice to the public at large. Whereas, the limitation to file Suit for "Cancellation" is governed by Article 91, of the Limitation Act, 1908, which provides 03 years limitation starting from the date of knowledge. In Case of Abbas Ali Shah and 5 others v. Ghulam Ali and another *(2004 SCMR 1342)*, it has been held by the Supreme Court of Pakistan that:

> *"The document which is registered under Registration Act, 1908 acquires the status of public document and general presumption of notice is attached with a registered document from the date of its registration and unless lack of knowledge is proved through the convincing evidence, the presumption of notice is raised from the date of registration of document. In the present case, except the oral assertion of lack of knowledge, no evidence was brought on record and thus the presumption of the knowledge of sale or the registration of sale-deed would remain unrebutted".*

16. The other question to be decided, as raised by the plaintiffs/respondents No. 1 to 4, is that the suit land was mortgaged. During that period, the suit land could not be sold. Hence, the registered Sale Deed is a false document. In the present case, the bank put a charge on the suit land in their favour by making an entry in the Pass Book. I couldn't find anything in the mortgage letter, Charge Creation Certificate, or passbook that would stop the plaintiffs from selling the land. The person who borrowed the money and used their property as collateral has the right to get their property back after paying off the debt. The equity of redemption is when the person who took out the mortgage still has some ownership of the property, even after the bank or lender. It is an established rule that the right to get back property after a mortgage is like property itself and can be passed on to someone else. So, if another mortgage is created, it is linked to this right. The finance agreement between the bank and the plaintiffs does have rules that stop the plaintiffs from selling the suit land. However, that is just a promise between the bank and the people suing and does not change the status of the land being sued for. This is because the agreement mentions the mortgage that will be created on the land for the bank. The rules in the finance agreement might make it hard for someone to pay off their debt, which could make the agreement invalid. In this situation, I am placing reliance in the case of Muhammad Sadiq and others vs. Muhammad Mansha and others (PLD 2018 SC 692) where the Supreme Court of Pakistan held as under: -

*"In our view, with respect, the reasoning and the conclusion of the learned High Court proceeded on a fundamental misconception of the law. As is well known, when a property is mortgaged by one person to another the interest that is left in the hands of the mortgager is called the equity of redemption. Now, the equity of redemption is itself immovable property which can be dealt with as such by the mortgager, whether by way of sale, subsequent mortgage, gift or transfer but subject always to the rights and interests of the mortgagee. In other words the existence of a mortgage on immoveable property does not in or itself constitute a bar to subsequent dealing by the mortgager as regards the equity of redemption. This position was regarded as settled law as long ago as 1895, as is attested by the decision of the Calcutta High Court in Kanti Ram and others v. Kutubuddin Mohamed and others (1895) 22 Cal 33: As regards the equity of redemption, the court held as follows (pp 41-2; Emphasis supplied):*

> *It was strongly contended before us that the words "specific immoveable property," as mentioned in Section 58, denote the property itself as distinguished from any equity of redemption which the mortgagor might at the time possess in the said property. The words "immovable property" have been defined in the General Clauses Act, I of 1868. Section 2, Clause (5) says: "Immoveable property shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth." [See now, section 3(25) of the General Clauses Act, 1897] regard being had to this definition, it seems to us that the words "immoveable property" include the rights of the mortgagor in the property mortgaged at the time of the second mortgage, or, in other words, his equity of redemption in that property, and when the Legislature in Section 58, in defining what a mortgage is, speaks of the transfer of an interest in specific immoveable property, we are unable to say that, when property, subject to a prior mortgage, is mortgaged a second time, or, in other words, when the mortgagor's equity of redemption in that property is mortgaged to another person, it is not a mortgage of specific immoveable property within the meaning of that section."*
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> *As to the nature of the equity of redemption, the High Court observed that it was "the specific immoveable property of the mortgagor, burdened as it is with the prior incumbrance, i.e., the property of the mortgagor minus the interest which he had already transferred to the ... mortgagee" (pg. 37; Emphasis in original). Finally, it was also observed as follows (pg. 42):*
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> *"It is, we think, now settled law that a mortgagor may either absolutely sell or mortgage his remaining*

> *interest in the property which he has already mortgaged, notwithstanding there may be a covenant in the earlier mortgage prohibiting such a sale or subsequent mortgage. The purchaser, or the second mortgagee, in that event stands in the place of the mortgagor and takes the property subject to the prior lien."*
>
> *6. In our view, law that was regarded as settled 125 years ago can hardly be disturbed today. As will be seen from the foregoing passages, the equity of redemption is simply the interest in the property that remains with the mortgager minus the interest created thereon in favour of the mortgagee, and it is in this interest that can be dealt with by the mortgager in accordance with law. It follows from this that if the mortgager enters into an agreement to sell subsequent to the creation of the mortgage, he can do so. He is then selling his property burdened as it is with the mortgage in favour of the mortgagee, i.e., he is disposing off the equity of redemption. As this is permissible under law, it follows that if the mortgager having entered into such an agreement to sell does not abide by the same, then the buyer of the property is entitled to bring a suit for specific performance. Of course, the rights and interests of the mortgagee will not be defeated, since the buyer will step into the shoes of the mortgager as seller. If the factum of the mortgage is known to the buyer then he can simply join the mortgagee as a defendant in the suit so that if he succeeds in obtaining a decree for specific performance the rights of the various parties can be appropriately dealt with. However, even if the factum of mortgage is unknown to the buyer and does not come to light during the course of the suit, any decree obtained by the buyer would still, and nonetheless, remain subject to the rights and interests of the mortgagee."*

17. Even otherwise, the evidence of an official of ZTBL PW-Muhammad Nawaz examined by the plaintiffs does not indicate that there has been any default in the payment of the loan amount or that any action has ever been taken against plaintiffs No.1 and 3, who obtained a loan from the bank. He produced the passbooks of respondent/plaintiff No.1 & 3, which show that the loan was cleared on 07.01.1997 and 07.07.1994, respectively, whereas the registered Sale Deed involved in the present case was executed on 15.02.1997. Subsequently, two purchasers/applicants, No.3 & 4 (Hoat Ali, son of Haji Misri and Muhammad Ishaq), obtained a loan by mortgaging the suit land from the same bank. In this regard, the defendants have also examined the same bank official as D.W., who affirmed that the loan

was taken by Hoat Ali and Muhammad Ishaq and produced the relevant loan documents. He also stated in his evidence that the record shows that the suit land is still mortgaged in the name of the above-mentioned purchasers. If so, then prima facie, the bank has accepted that defendants No.3 and 4 have stepped into the place of the plaintiffs. The interest of the bank in the suit land is only to the extent, and for the purposes, of repayment of the financing provided by it.

18. In legal proceedings, the burden of proof generally lies with the party who files the suit. In the context of a suit for cancellation of a registered Sale Deed, the initial burden of proof is indeed on the plaintiffs, who alleged in their plaint that the Sale Deed is fraudulent and managed. The plaintiffs must establish the basis for the cancellation by clear, cogent, and convincing evidence. This could involve proving that the signatures/thumb impressions were obtained by fraud or that there was undue influence involved. If the plaintiffs fail to establish the existence of fraud, there is no occasion for its discovery. In the present case, the plaintiffs have only examined their attorney, namely Bashir Ahmed, who simply deposed that in the year 2002, the suit land was orally given to the defendants on lease/*makata* for three years. After the expiry of three years, the defendants again approached them for a further three years, which were too extended. He further deposed that in 2008, they asked the plaintiffs to vacate the suit land, but they refused on the pretext that their elders sold the suit land to them, and they showed the false entry and registry. However, he has not specifically denied that signatures/thumb impressions on the Sale Deed are forged and fabricated. The plaintiffs have also examined another witness, Sono Khan, as PW-6, who has also given the same evidence as given by the above-said attorney. In order to discharge their burden, none of the plaintiffs themselves step into the witness box to specifically deny that their signatures/thumb impressions on the registered Sale Deed are

forged and fabricated. This reflects that the plaintiffs have intentionally not appeared before the court to depose in person, possibly to avoid the test of cross-examination or with an intention to suppress some material facts from the court. Therefore, it can safely be presumed adversely against the plaintiffs as provided under Article 129(g) of the Qanun-e-Shahdat Order, 1984. The whole claim of the plaintiffs was based on the plea that the suit land was mortgaged; hence, it cannot be transferred, but in this regard, the entries produced by the official witnesses in their evidence do not bear the note of mortgage entry to say that suit land could not be sold.

19. On the other hand, the defendants, being beneficiaries of the registered Sale Deed, examined the official witness Sub-Registrar, who produced the thumb register showing the thumb of the plaintiffs. He also produced a Sale Certificate, which was issued to the plaintiffs. The other official witness, Tapedar, who produced entry, kept in favour of the defendants on the basis of the above registered Sale Deed. The defendant No.8 Hoat Ali also examined himself and produced an original Sale Deed. He also stated that the Author/stamp vendor, namely Mushtaq Ahmed, and one of the marginal witness, Sher Muhammad, are not alive. The defendant further examined one of the marginal witnesses of the registered Sale Deed, namely Azizullah, who, in his evidence, admitted that he is the son of Hoti (plaintiff No.3, one of the executants of the registered Sale Deed). Therefore, he was declared hostile and cross-examined by the defendant's counsel. Here, the prudent mind cannot accept that if the Sale Deed was managed fraudulently by the defendants, how could they cite the marginal witness, who is the son of one of the executants? In the case of Muhammad Munir and others vs Umar Hayat and others (2023 SCMR 1339), the Supreme Court of Pakistan has held as under: -

> *"13. It is settled that the standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt. In absence of any tangible evidence produced by the plaintiffs to support the plea of fraud, it*

*does not take the matter further. Rather, in this case the testimony of the attesting witness, identifier and other independent witnesses, such as, the Sub-Registrar and the Record-Keeper (Reader to the Sub-Registrar) plainly support the case of the defendants. That evidence dispels the doubt, if any, and tilts the balance in favour of the defendants.*

*14. Suffice it to observe that since the plaintiffs could not establish the existence of fraud, it must follow that their suits have ex-facie no merit."*

*[Emphasis supplied]*

20. The plaintiffs allegedly leased out suit land to the defendants verbally for a period of three years twice. However, they did not disclose the rate, terms, conditions, or witnesses of the lease in the plaint. This lack of documentation and specifics could indeed make the lease legally questionable. In legal terms, a verbal or oral lease agreement that extends for a period of more than one year is often considered to have no legal value. This is primarily due to the fact that such agreements are not documented or recorded in a tangible form, making them difficult to enforce or prove in a court of law. The absence of a written record can lead to disputes and misunderstandings over the terms of the lease, including the duration, lease amount, and responsibilities of each party. Therefore, for lease agreements extending beyond one year, it is generally recommended to have a written contract to ensure legal protection for all parties involved. In the case of Ashiq Muhammad and others vs. Mst. Suhagan (2023 SCMR 1171), it has been held by the Supreme Court of Pakistan as under: -

*"5. Additionally, the respondent has set up a case that she had leased out the subject property to the appellant through an oral lease (mustajri) agreement and the lease money was being paid to her regularly. However, she admitted in her cross-examination that she has no proof or receipt to show that any lease (mustajri) money was ever paid by the appellant. Beside, the evidence produced by the respondent to prove that the subject land was given to appellant on lease (mustajri), does not inspire confidence as the respondent in her deposition very categorically*

> *asserted that she herself entered into a lease (mustajri) agreement with the respondent and that there were no witnesses of lease whereas PW-2 in his cross-examination stated that the terms of lease (mustajri) agreement were settled in his as well as his brother Ghulam Shah's presence."*

21. In the present case, the plaintiffs have also been unsuccessful in establishing their possession over the suit land for the period spanning from 1997 to 2002. This crucial fact has been conceded by the plaintiffs' attorney and corroborated by their witness during their cross-examination. The inability to substantiate their claim of possession during this specific time frame significantly weakens the plaintiffs' case, as possession is a key element in property disputes. This admission could potentially influence the court's decision, as it directly pertains to the plaintiffs' asserted rights over the suit land.

22. There is a legal maxim "possession follows title; title follows possession" encapsulates two fundamental principles in property law. The first part, "possession follows title," signifies that the person who holds the legal title to a property is entitled to its possession. This means that ownership confers the right to possess and use the property. Conversely, the second part, "title follows possession," suggests that continuous and undisputed possession over a certain period can lead to ownership. These principles highlight the intricate relationship between possession and ownership in property law.

23. Henceforth, instant Revision application has been filed in response to the divergent conclusions reached by the lower Courts. A review of the trial court's decision reveals that it was rendered after taking into account the evidence on record and hearing arguments from both parties. However, the Judgment of the appellate Court appears to be marred by misinterpretation and omission of evidence and a lack of proper evaluation of the facts and documentary evidence on record. In my opinion, the trial court did not commit any illegality or significant irregularity, and its findings had no legal defects. Therefore, the appellate court should not have interfered.

For these reasons, it seems that the appellate court's Judgment is arbitrary, fanciful, and perverse and appears to result from misreading and non-reading of the complete evidence and other material on record. In the case of Muhammad Din and others vs. Mst. Naimat and others (2006 SCMR 586), the Supreme Court of Pakistan, made a significant ruling that the learned trial Court and the First Appellate Court arrived at conflicting conclusions despite examining the same evidence. This discrepancy prompted the High Court to exercise its revisional jurisdiction under Section 115 of the Code, 1908. The High Court undertook a thorough reevaluation of the entire body of evidence, which was deemed to be a correct application of its powers. This case underscores the critical role of the High Court in ensuring justice by reassessing evidence when lower courts reach divergent conclusions based on the same set of facts. It highlights the importance of checks and balances in the judicial system and the need for higher courts to intervene when necessary to uphold justice.

24. For the foregoing reasons, the instant Revision Application stands allowed. Consequently, the impugned Judgment and decree of the appellate court are set aside. Resultantly, the Judgment and decree of the trial court is restored, with no order as to costs.

J U D G E

Faisal Mumtaz/P.S.